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October 19, 2015

By Facsimile and ECF

Hon. Shira A. Scheindlin
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: Garber v. Office of the Commissioner of Baseball, 12-cv-3704 (SAS)

Dear Judge Scheindlin:

We represent the Major League Baseball ("MLB") Defendants¹ in the above-captioned matter, and we write in response to Edward Diver's letter to the Court, dated October 14, 2015, which sought permission to depose Robert M. Manfred, Jr., Commissioner of MLB.

A little more than a week ago, Plaintiffs asked to depose Mr. Manfred because of his election as Commissioner over a year ago, on August 14, 2014, and because he was designated for two additional topics in the MLB Defendants' Supplemental Disclosures.

¹ Office of the Commissioner of Baseball, Major League Baseball Enterprises, Inc., MLB Advanced Media, L.P., MLB Advanced Media, Inc., Athletics Investment Group LLC, The Baseball Club of Seattle, L.P., Chicago Cubs Baseball Club, LLC, Chicago White Sox, Ltd., Colorado Rockies Baseball Club, Ltd., The Phillies, Pittsburgh Baseball, Inc., and San Francisco Baseball Associates, L.P.

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*NOT AN ACTIVE MEMBER OF THE DC BAR

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The Court should deny Plaintiffs' request for permission to depose Mr. Manfred as untimely and prejudicial, and because Plaintiffs already have testimony from his immediate predecessor regarding the same or similar topics on which they now seek to depose him.

The MLB Defendants identified Mr. Manfred as a potential witness in their Initial Disclosures nearly three years ago—on January 17, 2013. Mr. Manfred has been employed by MLB during the entire pendency of this case—until his election as Commissioner, he served as Executive Vice President and Chief Operating Officer. Plaintiffs elected not to depose Mr. Manfred during fact discovery, nor did Plaintiffs seek to depose him in the fourteen months since his election as Commissioner, including after he formally assumed that role more than eight months ago, on January 25, 2015.

More than two months ago, on August 7, 2015, the MLB Defendants served upon Plaintiffs their Supplemental Disclosures, which updated the title for Mr. Manfred (as they did for other witnesses) and added only two topics—"the process for forming and changing rules" and "the procompetitive effects of the MLB broadcast rules and territories"—on which Mr. Manfred could testify. At that time, Plaintiffs did not object to the new disclosures, nor did they request a deposition of Mr. Manfred.

Nor did Plaintiffs raise these issues on September 22, 2015, when they wrote to the Court regarding the MLB Defendants' Supplemental Disclosures, objecting to the addition of six individuals.² Plaintiffs did not mention Mr. Manfred in their letter, nor did Plaintiffs mention Mr. Manfred in any of their three letters to the MLB Defendants' counsel regarding the Supplemental Disclosures.³

Eight days after Plaintiffs' letter to the Court, Your Honor held a status conference to address the MLB Defendants' Supplemental Disclosures. Although Plaintiffs' counsel raised issues relating to the newly identified individuals; the purported unfairness of reopening fact discovery that closed nearly two years ago; and the alleged prejudice of allowing additional testimony after the submission of expert reports,⁴ they did not object and did not indicate any desire to depose Mr. Manfred.

Plaintiffs should have raised any concerns they had with the new disclosures when they received them, or at the very latest at the hearing the Court conducted on the issues. The belated request is also perplexing because one of Plaintiffs' justifications is the fact that Mr. Manfred is now the Commissioner of Baseball. Not only

² Plaintiffs objected to the MLB Defendants adding Michael Biard, Jeffrey Krolik, Laurence Baer, Robert Nutting, Lawrence Jones, and Stuart Sternberg.

³ Plaintiffs sent letters to the MLB Defendants' counsel, dated August 27, 2015; September 8, 2015; and September 22, 2015.

⁴ Defendants served their expert reports on Plaintiffs on August 24, 2015. Defendants' experts are scheduled to be deposed today and this Friday, October 23.

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have Plaintiffs known that for over a year, but they also deposed Mr. Manfred's immediate predecessor as Commissioner, Allan H. "Bud" Selig, on January 3, 2014. Mr. Selig had been Commissioner since before the start of the class period until January 24, 2015.

Plaintiffs already have testimony from Mr. Selig on the same or similar topics on which they now seek to depose Mr. Manfred. For example, on the process for forming and changing rules, Mr. Selig answered Plaintiffs' questions about how the MLB Constitution can be modified or amended. (*See* Selig Tr. at 10:4-11:18.) And on the procompetitive effects of the MLB broadcast rules and territories, for example, Mr. Selig answered Plaintiffs' questions about the impact on competitive balance of the League's division of national and local rights. (*See id.* at 47:18-50:2.)

Permitting Plaintiffs to depose Mr. Manfred at this late date when the parties are preparing for trial and working intensively to comply with the Court's pretrial order will prejudice the MLB Defendants. Plaintiffs' request should be denied, and Mr. Manfred should be able to testify at trial about all of the topics for which he has been designated.

Respectfully,

A handwritten signature in black ink, appearing to read "Beth A. Wilkinson" followed by a stylized monogram or initials.

Beth A. Wilkinson

cc: All counsel (via ECF)